

**Amendment Number 3  
to  
Contract Number DIR-SDD-1777  
between  
State of Texas, acting by and through the Department of Information Resources  
and  
AT&T MOBILITY NATIONAL ACCOUNTS LLC**

This Amendment Number 3 to Contract Number DIR-SDD-1777 ("Contract") is between the Department of Information Resources ("DIR") and AT & T Mobility National Accounts LLC ("Vendor"). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2, Term of Contract, A.** is hereby amended as follows:
  - A. The term of this Contract is extended through April 12, 2016 completing all three (3) additional one-year options. No additional extension options remain.
2. **Contract, Section 4. Pricing,** is hereby removed from the Contract and transitioned in its entirety to **Appendix A, Standard Terms and Conditions for Products and Related Services Contracts, Section 7. Pricing, Purchase Orders, Invoices, and Payments.**
3. **Contract, Sections 5-8** are hereby re-numbered **Sections 4-7**, as follows:
  - A. Section 5. DIR Administrative Fee is re-numbered as **Section 4. DIR Administrative Fee;**
  - B. Section 6. Notification is re-numbered as **Section 5. Notification;**
  - C. Section 7. Shrink/Click-wrap License Agreement is re-numbered as **Section 6. Software License and Service Agreements;**
  - D. Section 8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Products and Related Services Contracts is hereby re-numbered as **Section 7. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Products and Related Services Contracts**
4. **Appendix A, Standard Terms and Conditions for Products and Related Services Contracts dated 7/13/2011,** is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Products and Related Services Contracts dated 02/04/2015.**
5. **Contract, Section 7. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Products and Related Services Contracts** is hereby updated and restated as follow:
  1. **Appendix A, Standard Terms and Conditions for Product and Related Services Contracts;** all references to "administrative fee(s)" are hereby restated in their entirety.
  2. **Appendix A, Section 4.F. Choice of Law** is hereby restated as follows:

## **F. Choice of Law**

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity, nor as a waiver of any Vendor's defenses under Texas law.

3. **Appendix A, Section 7.N. Payments** is hereby restated as follows:

### **C. Payments**

Customers eligible under Chapter 2251 shall comply with Chapter 2251, Texas Government Code, in making payments to Order Fulfiller. The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

(2) For Customers who are not subject to Chapter 2251, payment is due within thirty (30) days after the date of the invoice, and payment must refer to the invoice number. AT&T may charge late payment fees at the lower of 1.5% per month or the maximum rate allowed by law for overdue payments.

4. **Appendix A, Section 9.A. Indemnification** is hereby restated as follows:

### **A. Indemnification**

#### **1) Independent Contractor**

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER, DIR OR THE STATE OF TEXAS.

#### **2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract REGARDLESS OF THE NEGLIGENCE OF THE CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED BY (I) THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. (II) BY CUSTOMER'S LOCAL COUNSEL FOR CUSTOMERS THAT ARE POLITICAL SUBDIVISIONS

(INCLUDING COUNTIES, MUNICIPALITIES, OR DISTRICTS) AND (III) BY VENDOR'S LEGAL COUNSEL FOR CUSTOMERS THAT ARE EITHER PRIVATE INSTITUTIONS OF HIGHER EDUCATION OR ASSISTANCE ORGANIZATIONS (AS BOTH ARE DESCRIBED IN THE DEFINITION OF "CUSTOMER" IN THIS APPENDIX A ("DEFINITIONS")). IN ADDITION, IN CASES WHERE EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL IS COORDINATING THE DEFENSE (I)) OR LOCAL COUNSEL IS COORDINATING THE DEFENSE, VENDOR WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT VENDOR'S EXPENSE, BUT VENDOR AGREES NOT TO INTERFERE WITH EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL'S OR LOCAL COUNSEL'S (AS THE CASE MAY BE) MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. IN CASES WHERE VENDOR IS COORDINATING THE DEFENSE, THE AFFECTED CUSTOMER WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT CUSTOMER'S EXPENSE, BUT CUSTOMER AGREES NOT TO INTERFERE WITH VENDOR'S MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. NOTWITHSTANDING THE FOREGOING, VENDOR DOES NOT WAIVE ANY DEFENSES UNDER TEXAS LAW.

### **3) Infringements**

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND CUSTOMERS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

b) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**5. Appendix A, Section 9.K. Limitation of Liability** is hereby restated as follows:

**K. Limitation of Liability.**

(a) For any claim or cause of action arising under or related to the Contract, neither Party will be liable to the other Party for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

(b) EACH PARTY'S LIABILITY TO THE OTHER UNDER THE CONTRACT WILL NOT EXCEED THE TOTAL VALUE OF VENDOR'S INVOICES TO DIR IN THE TWELVE (12) MONTHS PRECEDING THE FILING OF A LAWSUIT

(c) Exceptions to Limitations of Liability. This *Section* will not apply with respect to:

(1) Losses occasioned by the fraud (except as rendered inapplicable to the State, DIR and all state agency and local government Customers), willful misconduct, or gross negligence of a Vendor.

(2) Losses that are the subject of Indemnification under this CONTRACT.

(3) Losses occasioned by any breach of a Party's obligations under the Confidentiality and Disclosure provisions of this Contract.

**6. Appendix A, Section 9.L. Overcharges** is hereby restated as follows:

**L. Overcharges**

Vendor hereby assigns to DIR any and all claims for overcharges associated with products and services provided to DIR and Customers under this Contract arising under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq.* (1973), as amended, and the antitrust laws of the State, Sections 15.01, *et seq.*, Texas Business & Commerce Code.

**7. Appendix A, Section 9.T. Deceptive Trade Practices; Unfair Business Practices** is hereby restated as follows:

**T. Deceptive Trade Practices; Unfair Business Practices**

Vendor represents and warrants that to the best of its knowledge and belief neither Vendor nor any of its Subcontractors has within the last 3 years been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or it has no officers who have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations.

**8. Appendix A, Section 10.A. Enforcement of Contract and Dispute Resolution** is hereby restated as follows:

**A. Enforcement of Contract and Dispute Resolution**

**1)** Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the

dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas. Notwithstanding the foregoing, Vendors intend to resolve all billing disputes with Customers in accordance with Chapter 2251, Texas Government Code.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing. Notwithstanding any such Dispute, the Vendor must continue to perform the Services in compliance with the terms of this Contract pending resolution of Disputes so long as all undisputed amounts continue to be paid to Vendor.

9. **Appendix A, Section 10.C. Force Majeure** is hereby restated as follows:

**C. Force Majeure**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract except for payment obligations for services already rendered for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

6. All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract.

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**IN WITNESS WHEREOF**, the parties hereby execute this amendment to be effective as of the date of the last party to sign, but in all events no later than April 12, 2015.

**AT&T MOBILITY NATIONAL ACCOUNTS LLC**

Authorized By: Signature on File

Name: Linda J. Cottingham

Title: Sr. Contract Manager

Date: 6/2/2015

**The State of Texas**, acting by and through the  
**Department of Information Resources**

Authorized By: Signature on File

Name: Dale Richardson

Title: COO

Date: 6/2/2015

Office of General Counsel: 6/2/2015